

SENATE, No. 2260, printed as amended

[Senate, February 4, 2010. Text of Senate, No. 2245, printed as amended.]



The Commonwealth of Massachusetts

IN THE YEAR OF TWO THOUSAND AND TEN

AN ACT RELATIVE TO COMPREHENSIVE SITING REFORM FOR LAND BASED WIND PROJECTS.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is to establish forthwith clear standards and timely and predictable permitting procedures to encourage wind energy development in the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled,

And by the authority of the same, as follows:

- 1 **SECTION 1.** This act shall be construed in a manner to achieve its public purposes, which are
- 2 to encourage the development of clean, renewable, electric generating plants and ancillary facilities
- 3 powered by wind, ensure that such facilities are sited in appropriate locations based on clear, predictable

4 and protective environmental, cultural and historic resource standards and streamline the permitting of
5 such facilities at the state and local level and reduce delays associated with appeals of such permits.

SECTION 2. Section 10 of chapter 25A of the General Laws, as amended by section 22 of chapter 169 of the Acts of 2008, is hereby amended by adding the following subsection:-

8 (g) The department shall have a full-time employee who shall work within the division and
9 collaborate with regional planning authorities to provide technical assistance to municipalities with
10 respect to the siting of wind energy facilities.

11 **SECTION 5.** The General Laws are hereby amended by inserting after Chapter 40S the
12 following chapter:-

Chapter 40T: Wind Energy Permitting

14 Section 1. As used in this chapter, the following words shall, unless the context clearly requires
15 otherwise have the following meanings:-

16 “Facility”, a wind energy facility.

“Local boards”, boards, commissions, officials or other municipal agencies or authorities who would otherwise have jurisdiction over any portion or all of the siting of a proposed facility.

19 “Interested Party”, an abutter; abutting municipality; a lawfully established trust, corporation,
20 partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock
21 company, receivership, business or real estate trust or any other legal entity organized for profit or
22 charitable purposes who is substantially and specifically affected by a proposed facility; or any group
23 consisting of not fewer than 10 residents of the municipality in which the facility is proposed.

24 “Regional planning agency”, an agency with regulatory authority to issue permits, licenses or
25 other governmental approvals for particular land uses within its jurisdiction

“Wind energy facility”, a facility including blades, turbines, towers, supports, foundations and
any ancillary facilities such as roadways, transmission or distribution lines, substations and any other
buildings, structures or equipment whose primary purpose is to support the generation and delivery of
electricity of at least 2 megawatts powered by wind; provided, however, that wind energy facility shall

30 not include structures or buildings whose primary purpose is unrelated to the generation and delivery of
31 electricity powered by wind.

32 “Wind energy permitting board”, municipal board appointed under section 3 or if no board has
33 been appointed, the planning board in the city or town of the proposed facility.

34 Section 2. The department of energy resources, in consultation with the Massachusetts
35 Municipal Association and applicable regional planning authorities, shall determine which municipalities
36 in the commonwealth contain significant wind resource areas; provided, however, that the department
37 shall promulgate through regulation criteria for such determination; provided, further, that prior to a final
38 determination, the department shall hold at least 1 public hearing in the region containing the relevant
39 municipality and offer a period for public comment. A municipality with significant wind resource areas
40 shall establish a wind energy permitting board to conduct local permitting of a wind energy facility,
41 within 30 days of receipt of a letter of intent from an applicant seeking to file an application under this
42 chapter. In all other municipalities, the municipality may establish a wind energy permitting board..

43 Section 3. In the case of towns, the board of selectmen, and in the case of cities, the mayor, shall
44 establish and appoint the wind energy permitting board, to be composed of either 3 or 5 members, at the
45 discretion of the board of selectmen or mayor. A 3 member board shall consist of 1 representative from
46 the conservation commission, 1 member from the zoning board of appeals, and 1 member from the
47 planning board. A 5 member board shall consist of 2 members of the conservation commission, 1
48 member from the zoning board of appeals and 2 members from the planning board. The board of
49 selectmen or mayor shall appoint 1 member of the board to be the chairman. If the board of selectmen or
50 mayor determines that it is infeasible to establish a wind energy permitting board, the planning board
51 shall serve as the wind energy permitting board. In such instances, the planning board shall take actions
52 to maximize the opportunity for input from other municipal boards, and shall at a minimum ensure that
53 the conservation commission and zoning board of appeals are provided with copies of the application
54 and notices of all public hearings relating to the application.

55 Section 4. (a) A person who proposes to construct a wind energy facility with a capacity of at
56 least 2 megawatts may elect to follow the procedure established by this chapter.

57 (b) A proposal to develop a wind energy facility that complies with the standards established
58 under section 69V of chapter 164 shall be eligible for the fast-track permitting set forth in this section
59 and section 69W of chapter 164.

60 (c) The project proponent shall file an application with the wind energy permitting board and the
61 town or city clerk in lieu of separate applications to the local boards. The proponent shall also file the
62 application with the town or city clerk of any abutting municipality. The application shall identify all
63 provisions of local laws or regulations from which a waiver is sought. Within 30 days of receipt, the
64 chairman of the wind energy permitting board, or the chairman's designee, shall determine whether the
65 application is complete and inform the proponent of that decision. If the application is incomplete, the
66 proponent shall be allowed 30 days or such longer time as may be mutually agreed upon to complete the
67 application. After the expiration of this period, the proponent may elect to go forward with the
68 information provided, and the procedures and timelines in this section shall apply.

69 (d) The wind energy permitting board shall immediately notify each such local board, as
70 applicable, of the filing of such application by sending a copy thereof to such local boards for their
71 recommendations and shall, within 60 days of the board's determination that an application is complete
72 or the expiration of the additional information period described in subsection (c), and in compliance
73 with the notice and publication provisions of section 11 of chapter 40A, hold a public hearing and a
74 written public comment period of not less than 45 days on the application. The wind energy permitting
75 board shall request the recommendations of the local boards as are deemed necessary or helpful in
76 making its decision upon such application and shall have the same power to issue a permit or other
77 approval as any local board or official who would otherwise act with respect to such application,
78 including, but not limited, to the power to attach conditions to said permit or approval as are consistent
79 with this section and all other laws and regulations.

80 (e) The wind energy permitting board, in making its decision on the application, shall apply all
81 applicable local by-laws and ordinances, including any by-laws regulating construction in and around,
82 and the disturbance of, wetlands and other environmentally sensitive areas, and shall take into
83 consideration the recommendations of the local boards and shall have the authority to assess fees to
84 retain consultants under section 53G of chapter 44. The board shall have the authority to waive zoning
85 and nonzoning requirements of the municipality's local laws, regulations, policies or other regulatory
86 requirements. (f) The wind energy permitting board shall file with the city or town clerk a written
87 decision, based upon a majority vote of the board, within 120 days from the filing of the application,
88 unless the time period is extended by mutual agreement by the board and the applicant, and the
89 agreement is filed with the city or town clerk prior to the expiration of the 120 day period. Failure to file
90 a written decision or extension within the 120 day period shall result in a constructive approval of the
91 application, unless a municipal board has made a timely referral of an application to a regional planning
92 agency.

93 (g) A wind energy facility that does not comply with the standards established under section
94 69V of chapter 164 shall be governed by subsections (a) through (f) of this section, except that the
95 deadline for a decision shall be 180 days. If the applicant states that the project complies with the
96 standards, but the wind energy permitting board determines through a vote or interim written decision
97 within the 120 day period that the application does not comply with the standards, the deadline for
98 decision shall be extended so that the deadline is 180 days from the filing of the application unless a
99 municipal board has made a timely referral of an application to a regional planning agency.

100 (h) The wind energy permitting board is authorized to assess a community mitigation fee upon
101 the applicant, which shall not exceed a cap established by the department of energy resources through
102 regulations. The cap shall be set so as to ensure that community mitigation fees do not render the project
103 economically non-viable.

104 (i) The applicant must offer the host municipality or its designee the option of entering into a
105 legally enforceable purchase and sale agreement for not more than 10 per cent of the electricity

106 generated on site for use by the host municipality or its designee; provided, however, that the wind
107 energy permitting board may accept other forms of mitigation in lieu thereof, including, but not limited
108 to, a purchase and sale agreement for electricity between the applicant and a municipality, a county, a
109 regional planning agency or other regional governmental entity, a municipal electric cooperative or a
110 municipal aggregator of energy. The host municipality is also authorized to enter into legally
111 enforceable agreements with the applicant for additional mitigation measures.

112 (j) Notwithstanding any general or special law to the contrary, a municipality, other local
113 governmental body or other local governmental bodies acting jointly on a regional basis whose
114 applications have been approved by a host municipality's wind energy permitting board under
115 this chapter, in which the wind energy permitting board has issued an approval under this chapter shall
116 be deemed to have met the green community eligibility requirements set forth in subsections (2) and (3)
117 of section 10(c) of chapter 25A, and if the municipality, other local governmental body or other local
118 governmental bodies acting jointly on a regional basis seeks a waiver of any of the other eligibility
119 requirements under section 10(c) of chapter 25A, shall be entitled to a finding that the municipality,
120 other local governmental body or other local governmental bodies acting jointly on a regional
121 basis has committed to alternative measures that advance the purposes of the green communities
122 program as effectively as adherence to the requirements.

123 (k) If a project proponent proposes a single wind energy facility in more than 1 municipality, the
124 wind energy permitting boards, or planning boards, if applicable, may hold joint hearings in 1 or more
125 municipalities.

126 (l) In areas where regional planning agencies have regulatory authority, a local wind energy
127 permitting board or planning board shall refer an application to the regional planning agency in
128 accordance with the special act establishing the regional planning agency. Notwithstanding any general
129 or special law to the contrary, prior to the regional planning agency's final determination on the
130 application, the local wind energy permitting board may review and hold public hearings and meetings

131 on the application; provided, however, that no final determination shall be made until the regional
132 planning agency has issued an approval or approval with conditions. Notwithstanding any general or
133 special law to the contrary, in areas where regional planning agencies have regulatory authority, a wind
134 energy permitting board and regional planning agency may hold joint hearings concerning a proposed
135 facility so that both boards may review a project simultaneously. A wind energy permitting board shall
136 file its written decision with the city or town clerk within 60 days of the date on which a regional
137 planning agency issues its final decision of approval or approval with conditions. Failure of the wind
138 energy permitting board to file a written decision or an agreed upon extension within the 60 day period
139 shall result in a constructive approval of the application by the wind energy permitting board. If a
140 regional planning agency denies a development of regional impact permit to a proposed wind energy
141 facility, the wind energy permitting board shall not issue any permits for such a facility and no
142 constructive approval shall result.

143 (m) (i) An interested party who is substantially and specifically aggrieved by a decision of the
144 wind energy permitting board or a regional planning agency granting a permit or permit with conditions
145 to the applicant, or constructively approving such a permit may appeal the decision to the energy
146 facilities siting board and this appeal shall be the exclusive means of review of such decisions of a wind
147 energy permitting board or a regional planning agency. The appeal shall be filed with the energy
148 facilities siting board no later than 30 days after the wind energy permitting board's decision is filed with
149 the city or town clerk or rendered by a regional planning agency, and shall be governed by section 69W
150 of chapter 164.

151 (ii) An appeal of a decision of the wind energy permitting board denying a permit or granting a
152 permit with conditions, brought by the applicant or by any other proponent of a wind energy facility
153 shall be filed with superior court or the permit session of the land court under section 3A of chapter 185
154 within 30 days of the filing of the decision with the city or town clerk and this appeal shall be the
155 exclusive means of review of such decisions of a wind energy permitting board. The court shall hear all
156 evidence pertinent to the authority of the wind energy permitting board and determine the facts, and,

157 upon the facts so determined, annul such decision if found to exceed the authority of the wind energy
158 permitting board or make such other decree as justice and equity may require. An appeal brought by the
159 applicant or by any other proponent of a wind energy facility of a decision of a regional planning
160 agency denying a permit or granting a permit with conditions shall be governed by the enabling statute
161 of the applicable regional planning agency and this appeal shall be the exclusive means of review of such
162 decisions of a regional planning agency.

163 **SECTION 6.** Section 69H of chapter 164 of the General Laws, as appearing in the 2008 Official
164 Edition, is hereby amended by inserting after the words “the commissioner of the department of
165 environmental protection” the following words:- , the commissioner of the department of fish and game.

166 **SECTION 7.** Said section 69H of said chapter 164, as so appearing, is hereby further amended
167 in line 20 by striking out the figure “3” and inserting in place thereof the following figure:- 4.

168 **SECTION 8.** Said section 69H of said chapter 164, as so appearing, is hereby further amended
169 by inserting after the words “labor issues” the following words:- , 1 of whom shall be a municipal
170 official with experience in land use planning.

171 **SECTION 9.** Chapter 164 of the General Laws, as so appearing, is hereby amended by inserting
172 after section 69S the following 5 sections:-

173 Section 69T. As used in section 69 U to 69 X, inclusive, the following words and terms shall,
174 unless the context clearly requires otherwise have the following meanings:—

175 “Facility”, a wind energy facility.

176 “Interested Party”, an abutter; abutting municipality; lawfully established trust, corporation,
177 partnership, sole proprietorship, firm, franchise, association, organization, holding company, joint stock
178 company, receivership, business or real estate trust or any other legal entity organized for profit or
179 charitable purposes which is substantially and specifically affected by the proposed facility; or any group
180 consisting of not fewer than 10 residents of the municipality in which the facility is proposed.

181 “Wind energy facility”, a facility including blades, turbines, towers, supports, foundations and
182 any ancillary facilities such as roadways, transmission or distribution lines, substations, and any other

183 buildings, structures or equipment whose primary purpose is to support the generation and delivery of
184 electricity of at least 2 megawatts powered by wind; provided, however, that wind energy facility shall
185 not include structures or buildings whose primary purpose is unrelated to the generation and delivery of
186 electricity powered by wind.

187 “Wind energy permitting board”, municipal board appointed under sections 2 and 3 of chapter
188 40T or if no board has been appointed, the planning board.

189 Section 69U. The department of public utilities shall establish a division of wind energy facility
190 siting. The chairman of the department of public utilities shall appoint a director of that division who
191 shall be responsible for ensuring that the standards established in section 69V of this chapter are timely
192 issued, and that the procedures for the siting of wind energy facilities established in section 69W result
193 in timely and predictable permitting decisions that uphold the intent of sections 69U through 69X,
194 inclusive.

195 Section 69V. (a) The energy facilities siting board shall, with the approval of the secretary of the
196 executive office of energy and environmental affairs, promulgate regulations pursuant to chapter 30A
197 containing standards for the siting, operation, and decommissioning of electric generating plants and
198 ancillary facilities thereto that are: (1) powered by wind energy and (2) have the capacity to generate at
199 least 2 megawatts of electricity. The standards shall be established for wind energy facilities that are
200 sited on land. Facilities are not required to comply with the standards established under section 69V by
201 the energy facilities siting board, but compliant facilities shall be eligible for state agency fast-track
202 permitting under section 69W of this chapter and municipal fast-track permitting under chapter 40T. The
203 siting of offshore wind facilities shall be governed by the integrated ocean management plan established
204 under section 4C of chapter 21A.

205 (b) The standards for wind energy facilities sited on land shall include, but not be limited to;

206 (1) lighting;

207 (2) appropriate setbacks from residences to prevent significant sound and health and

208 safety impacts;

(3) performance standards to avoid impacts, and to the extent impacts cannot be avoided, to minimize and mitigate impacts to scenic or recreational areas of special federal or state significance, regional cultural facilities, historic resources, priority or estimated habitats for plant and animal species listed pursuant to chapter 131A, populations of bird and bat species that are considered by the department of fish and game as being vulnerable to impacts from the operation of wind turbines, large unfragmented habitat blocks, wetland resources or other ecologically sensitive areas subject to protection under federal or state law or as identified by the department of environmental protection, department of conservation and recreation, or the department of fish and game; and

(4) such other factors as the board determines to be relevant to foster the development of wind energy in a manner that avoids, minimizes and mitigates material adverse environmental impact. Mitigation may include, but is not limited to, the preservation, enhancement, restoration or establishment of resources of greater or equal value to those being impacted, as compensation for unavoidable impacts.

The standards shall vary from region to region to take into account material differences in the natural resources, available wind resources or other characteristics of regions; provided, however, that all applicable standards shall be at least as protective as existing state environmental statutes and regulations. The standards shall be based upon best available science, be drafted in consultation with the relevant agencies and the advisory group created by subsection (c), and shall be reviewed and updated as necessary, but not less frequently than once every 5 years.

229 (c) The energy facilities siting board shall empanel an advisory group to develop recommended
230 standards under the direction of the chairman of the board. The advisory group may utilize the resources
231 and staff of the board, or those of the board's members, who may participate as appropriate. The
232 advisory group shall include the commissioner of the department of conservation and recreation, the
233 chairman of the Massachusetts historical commission, the commissioner of the department of public
234 safety, the commissioner of the department of public health, or the designees of any of the foregoing

235 from their respective staffs. The advisory group shall also include the following individuals to be
236 appointed by the governor: a representative of the wind energy industry; a representative of the electric
237 transmission and distribution industry; 2 representatives from non-profit environmental organizations
238 with experience in wind energy facility siting policy, 1 of whom shall represent a land and water
239 conservation organization; 1 representative of the Berkshire Regional Planning Commission; 1
240 representative of the Berkshire Natural Resources Council; 1 representative from the Metropolitan
241 Area Planning Council; 1 representative of Southeastern Regional Planning and Economic
242 Development District; 1 representative of the Franklin Regional Council of Governments; 1
243 representative from the Cape Cod Commission; 1 representative from the Martha's Vineyard
244 Commission; 1 representative from the Nantucket Planning and Economic Development Council; 1
245 municipal official with experience in wind energy siting drawn from a list of not fewer than 3 candidates
246 prepared by the Massachusetts Municipal Association; provided, however, that the same municipal
247 official may not serve on the wind energy facilities siting board and advisory group; and up to 2 other
248 representatives, appointed by the chairman, as the chairman of the board deems advisable. Prior to
249 submitting the recommended standards to the board, the advisory group shall hold not less than 2
250 regional public hearings for the purpose of soliciting public comments. Prior to adopting the regulations,
251 the board shall hold a public hearing and follow the additional procedures set forth in section 2 of
252 chapter 30A.

253 Section 69W. (a) Notwithstanding any general or special law to the contrary, any person who
254 proposes to construct a wind energy facility with a capacity of at least 2 megawatts may elect to follow
255 the procedures established by this section and sections 69U and 69V of this chapter.

256 (b) A proposal to develop a wind energy facility that complies with the standards established
257 under section 69V shall be eligible for the fast-track permitting procedures set forth in this section and
258 section 3 of chapter 40T.

259 (c) After a municipal wind energy board or planning board authorized under section 1 or 2 of
260 chapter 40T files a written decision with the city or town clerk, or constructive approval results pursuant
261 to section 3(f) of chapter 40T, the project applicant may file an application with the energy facilities
262 siting board, together with such supporting materials as are necessary to demonstrate that the facility
263 complies with the standards. The application shall include, in such form and detail as the energy
264 facilities siting board shall from time to time prescribe, the following information: (i) a description of the
265 proposed wind energy generating facility, including any ancillary structures and related facilities; (ii) a
266 description of the project's environmental impacts, both positive and negative; (iii) a statement of
267 whether the project complies with the standards established under section 69V, and if it does not, a
268 listing of the standards for which the project does not comply and an explanation as to why compliance
269 is not practicable; (iv) a complete list of state agency permits that would otherwise be needed for the
270 facility; and (v) any other information requested by the board. The applicant shall simultaneously file a
271 notice of the application with the municipal wind energy permitting board or planning board established
272 under chapter 40T, any state or regional agencies that have permitting authority over the proposed
273 facility, abutters to the site of the facility, and the office of the Massachusetts Environmental Policy Act,
274 which shall publish the notice, as soon as possible, in the Environmental Monitor. Within 45 days of
275 receipt of the application, energy facilities siting board staff shall review the application, notify all
276 relevant permitting agencies, and inform the applicant in writing whether the application is complete.
277 The applicant shall make the full application readily available to all relevant agencies and municipalities,
278 and the energy facilities siting board shall establish a procedure to ensure that the application and
279 supporting materials are available for timely local and statewide public access, including but not limited
280 to, electronically.

281 (d) Within 2 months of the energy facilities siting board notifying the applicant that the
282 application is complete, a hearing officer of the energy facilities siting board shall take written public
283 comment and hold a non-adjudicatory public hearing to take oral comment on the application. The
284 hearing shall be held in the host community or if no appropriate locations are available in a host

285 community, in the nearest available appropriate location. The hearing officer shall allow at least 45 days
286 from the board's determination that the application is complete for public comments to be submitted.
287 Based on the comments that are submitted, if the hearing officer determines that there are genuine
288 disputes of material fact as to whether the facility meets the standards, the hearing officer shall schedule
289 at least 1 evidentiary hearing for the limited purpose of taking further evidence upon the issues for which
290 there is a genuine dispute of material fact. In any instance in which there is a factual dispute between the
291 applicant and a state agency regarding matters within the state agency's regulatory authority, an
292 evidentiary hearing shall be held as to that dispute at the request of the applicant or the state agency.
293 Evidence may be presented at such hearing by the applicant, the municipality in which the proposed
294 facility is located, state permit granting authorities, and by any interested party; provided, however, that
295 such party submitted comments during the initial public comment period described herein. The
296 evidentiary hearing shall be completed no later than 3 months following the close of the initial public
297 comment period. The evidentiary hearing shall include written or oral testimony under oath, the
298 opportunity for cross-examination and the compilation of a record of admissible evidence, but the
299 hearing officer and the energy facilities siting board shall not be bound by paragraph 7 of section 11 of
300 chapter 30A.

301 (e) State permit granting agencies shall file written comments with the hearing officer during the
302 initial 2 month public comment period to assist the energy facilities siting board in determining whether
303 the standards have been met, and may include recommended conditions within each agency's regulatory
304 purview.

305 (f) Within 2 months of the close of the public hearing or evidentiary hearings if scheduled, the
306 energy facilities siting board shall determine, in writing, whether the proposed facility meets the
307 standards. Notwithstanding the provisions of any other law to the contrary, if the energy facilities siting
308 board finds that the proposed facility meets the standards, it shall approve the facility, and may impose
309 conditions to its approval. Conditions recommended by state environmental agencies with respect to
310 issues within their permitting authority, by state environmental agencies with respect to biological

311 resources identified under section 69V but not within their permitting authority, or conditions
312 recommended by host municipalities or their constituent boards or regional planning agencies with
313 regulatory authority, shall be adopted to the maximum extent practicable, and the energy facilities siting
314 board shall explain the reasons for not including any such conditions in its written decision.

315 (g) (1) If the energy facilities siting board finds that the facility does not meet the siting
316 standards, it may hold additional hearings to take additional evidence from both the applicant and
317 interested parties, if necessary, and, notwithstanding the provisions of any other law to the contrary,
318 approve the facility and impose conditions to its approval if it finds that:

319 (A) the facility has complied to the maximum practicable extent with the siting
320 standards established under section 69V;

321 (B) that the facility has mitigated the impact arising out of the non-compliance with the
322 siting standards; and

323 (C) the benefits of the facility outweigh the detriments.

324 (2) To determine whether the benefits outweigh the detriment, the energy facilities siting board
325 shall take into account;

326 (A) benefits including, but not limited to:

327 (i) the avoidance or reduction of greenhouse gases and other pollutants;

328 (ii) energy reliability;

329 (iii) security and diversification;

330 (iv) public ownership of the facility or reduction of electric rates to the
331 community that will be affected by the facility; and

332 (B) detriments including, but not limited to the impact on;

333 (i) ecologically sensitive areas;

334 (ii) large unfragmented habitat blocks;

335 (iii) priority or estimated habitats for all plant and animal species listed under
336 chapter 131A;

(iv) populations of bird and bat species that are considered by the department of fish and game to be vulnerable to impacts from the operation of wind turbines;

(v) historic, cultural or scenic or recreational areas of special federal or state

significance;

(vi) noise; and

(vii) public safety.

343 (3) Notwithstanding any other general or special law to the contrary, if the energy facility siting
344 board finds that the facility meets the standards in this subsection, it may approve the facility, and may
345 impose conditions to its approval.

(4) A decision under this subsection shall be issued no later than 9 months after the energy

347 facilities siting board determines in writing that the application is complete, if no evidentiary hearings
348 are held, or within 12 months after such determination if evidentiary hearings are held.

(5) Conditions recommended by state environmental agencies with respect to issues within their
ing authority under state law, by state environmental agencies with respect to biological resources
ed under section 69V but not within their permitting authority under existing state law, or
ons recommended by host municipalities or their constituent boards, shall be adopted to the
um extent practicable, and the energy facilities siting board shall explain the reasons for not
ng any such conditions in its written decision.

355 (h) The construction, maintenance and operation of a facility which receives an approval under
356 this chapter shall conform with such approval and any terms and conditions contained therein

357 Notwithstanding the provisions of any other law to the contrary, if the energy facilities siting board

358 issues an approval under this section, no state agency shall require any approval, consent, permit

359 certificate or condition for the construction, operation or maintenance of the facility with respect to

360 which the approval is issued and no state agency shall impose or enforce any law, ordinance, by-law

rule or regulation nor take any action nor fail to take any action which would delay or prevent the

362 construction, operation or maintenance of such facility; provided, however, that the energy facilities

363 siting board shall not issue an approval the effect of which would be to grant or modify a permit,
364 approval or authorization which, if so granted or modified by the appropriate state agency, would be
365 invalid because of a conflict with applicable federal water, air, historic or threatened and endangered
366 species standards or requirements. The approval, if issued, shall be in the form of a composite of all state
367 individual permits, approvals or authorizations which would otherwise be necessary for the construction
368 and operation of the facility and that portion of the approval which relates to subject matters within the
369 jurisdiction of a state agency shall be enforced by said agency under the other applicable laws of the
370 commonwealth as if it had been directly granted by the agency.

371 (i) The energy facilities siting board shall combine the review and approval process under this
372 section with any additional review of a local wind energy permitting board decision approving,
373 approving with conditions, or constructively approving an application if such an appeal is brought by a
374 person or entity other than the applicant under subsection l of section 3 of chapter 40T. If the energy
375 facilities siting board approves the facility under section (f) or (g), it shall affirm the decision of the wind
376 energy permitting board, but may modify conditions or impose additional conditions upon the approval
377 to address claims brought by the party seeking additional review of the wind energy permitting board
378 decision.

379 (j) An application filed by a person proposing to construct a wind energy facility that does not
380 comply with the standards shall also be governed by subsection (d) through(g), inclusive, except that:

381 (1) the hearing officer shall hold a public hearing and close the public comment period
382 within 4 months from the date that the energy facilities siting board determines that the
383 application is complete;

384 (2) the hearing officer shall hold evidentiary hearings as needed to resolve genuine
385 disputes of material facts within 8 months from the date the energy facilities siting board
386 determines that the application is complete; and

387 (3) the energy facilities siting board shall issue a decision within 4 months of the close
388 of the public comment period or evidentiary hearing.

389 (k) The regulations promulgated under section 69V shall include clear and concise application
390 requirements, including but not limited to pre-application survey requirements developed by the energy
391 facilities siting board in consultation with the department of fish and game and the department of
392 environmental protection, and may provide for pre-application consultation and site visits. No
393 application shall be considered complete until surveys, if required, are determined by the department of
394 fish and game or the department of environmental protection to be complete. Sufficient data shall be
395 required from the applicant by these regulations to enable the energy facilities siting board to determine
396 whether the facility meets the standards under section 69V, and if it does not, whether it meets the
397 standards set forth in subsection (g); provided, however, that these regulations shall not require any data
398 related to the necessity or cost of the proposed generating facility, except for data related to the costs or
399 economic feasibility associated with the mitigation, control or reduction of the environmental impacts of
400 the proposed generating facility, so that the energy facilities siting board can make an informed
401 determination as to the ability of the applicant to afford to comply with conditions imposed by an
402 agency, municipality or the state.

403 (l) The energy facilities siting board shall promulgate regulations governing the procedures for
404 permitting under this section and appeals brought under chapter 40T. The regulations shall also provide
405 for a reasonable fee for wind energy facility applications subject to this section to defray the energy
406 facilities siting board's reasonable costs of processing the application; a fee set under such regulations
407 may be adjusted according to project size or other objective criteria. The regulations shall also ensure
408 that a reasonable portion of the application fee charged shall be allocated to state agencies that would
409 otherwise be issuing permits for the facility in accordance with a fee schedule to be adopted concurrently
410 with the regulations. The energy facilities siting board may retain said fees for the purpose of reviewing
411 applications to construct wind energy facilities. Any remaining balances of said fees at the end of a fiscal
412 year shall not revert to the General Fund, but instead shall be available to the energy facilities siting
413 board during the following fiscal year for the purposes set forth in sections 69U through 69X, inclusive.

414 Nothing in this section shall change the level or use of siting fees for any other type of facility subject to
415 section 69J ½ of this chapter.

416 (m) Any interested party aggrieved by a decision of the energy facilities siting board under this
417 section shall have a right to judicial review in the manner provided by section 5 of chapter 25. The scope
418 of such judicial review shall be limited to whether the decision of the energy facilities siting board
419 conforms with the constitutions of the commonwealth and the United States, was made in accordance
420 with the procedures and application of standards established under sections 69V and 69W, and with the
421 rules and regulations of the board with respect to such provisions, was supported by substantial evidence
422 in the record of the board's proceedings and was arbitrary, capricious or an abuse of the board's
423 discretion.

424 (n) This section shall not be deemed to exempt wind energy facilities from sections 61, and 62A
425 through 62I of chapter 30.

426 Section 69X: Sections 69V and 69W shall not preclude, or obligate an applicant for a facility
427 from seeking and obtaining board approvals and certificates under sections 69K through 69O ½ in lieu of
428 proceeding under sections 69V and 69W.

429 **SECTION 9A.** Section 10 of chapter 25A of the General Laws, as appearing in the 2008
430 Official Edition, is hereby amended by striking out, in lines 22 and 23, the words, 'or other local
431 governmental body' and inserting in place thereof the following words:- , other local
432 governmental body or other local governmental bodies acting jointly on a regional basis.

433

434 **SECTION 9B.** Said section 10 of said chapter 25A, as so appearing, is hereby further
435 amended by inserting after the word 'municipality', in lines 29, 42 and 43, each time it appears,
436 the following words:- , other local governmental body or other local governmental bodies
437 acting jointly on a regional basis.

438

439 **SECTION 9C.** Said section 10 of said chapter 25A, as so appearing, is hereby further
440 amended by inserting after the word ‘locations’, in lines 27 and 28, the following words:- within
441 the municipality, other local governmental body or other local governmental bodies acting
442 jointly on a regional basis.

443 **SECTION 10.** The energy facilities siting board shall promulgate regulations under section
444 69V and 69W of chapter 164 of the general laws within 9 months of the effective date of this act.

445 **SECTION 11.** No application may be submitted to or reviewed through the streamlined
446 permitting process established in this act until all necessary regulations are promulgated.

447 **SECTION 11A.** The department of energy resources shall notify each municipality with
448 significant wind resource areas, as determined by the department, within 30 days of the effective date of
449 this act of the terms and provisions of this act.

450 **SECTION 12.** Nothing in this act shall be construed to allow the permitting process contained
451 in chapter 40T or sections 69U to 69X, inclusive, of chapter 164 of the General Laws to apply to land
452 that is under protection pursuant to Article XLIX, as appearing in Article XCVII of the Amendments to
453 the Constitution of the Commonwealth.